**REMARKS** 

The present Amendment is in response to the Office Action dated August 9,

2005 in reference to the above-identified application. The Examiner set a shortened

statutory period for reply of three (3) months, making the present Amendment due by

November 9, 2005. Filed concurrently herewith is a request for a three-month

extension of time so that the present Amendment is due by February 9, 2006.

In that Office Action, the Examiner noted that the Applicant mistakenly

requested that the second full paragraph on page 11 be amended when in fact the

first full paragraph was being amended. Accordingly, Applicant requests that the first

full paragraph of page 11 be amended. In addition, the Examiner pointed out that

"figure 9" in the second full paragraph of page 12 should read "figure 10." Applicant

requests that the specification be amended accordingly. Also, an informality in claim

14 was noted by the Examiner. Claim 14 has been amended to replace "member"

with "portion." Finally, new claim 36 has been added to the application.

Turning to the substantive rejections, claims 1-7, 10, 12-15, 18-21, 24, 30, 31,

and 33 have been rejected as being anticipated under 35 U.S.C. §102(b) over U.S.

Patent No. 6,055,832 to Wyers. The remaining claims have been rejected as

obvious under 35 U.S.C. §103(a) over Wyers in combination with one or more other

cited references, including U.S Patent No.6,209,369 to Freck, U.S Patent No.

6,508,086 to Chen, U.S Patent No. 4,226,100 to Hampton et al, U.S Application No.

2002/0108407 to Zapushek, U.S Patent No. 5,156,029 to Heald, and U.S Patent No.

6,467,316 to Chen.

Claims 1, 18, 30 and newly presented claim 36 each recite a "head cover" that

is operative "to engage said locking head." The Examiner contends that Wyers '832

discloses a head cover that engages the locking head. Applicant respectfully

Page 11 of 17 SN: 10/773,878 disagrees with the Examiner's reading of Wyers '832. Wyers '832 does indeed

disclose a locking head 40 (figure 2). However, as disclosed in the specification

"locking head 40 includes a housing 42" that houses outer sleeve 78, sleeve 90, and

parallel arms 100. (Wyers '832 specification: col. 6, lines 7, 36, 57; col. 7, line 4).

The Examiner contends that housing 42 is the head cover. It is nonsensical to argue

that housing 42 is the head cover that is operative to engage and cover itself.

Furthermore, In the present application it is noted that, "the structure of

locking head 40 is again the same as that described in [the Applicant's] U.S. Patent

No. 6,055,832." (page 10, line 24). It follows then, that the locking head in both

cases is the same, however in the present application the claims recite the addition

of a "head cover" 80 shown, for example, in figures 4-12, that covers the locking

head. Wyers '832 does not disclose such a cover. In order for a claim to be

anticipated under 35 U.S.C. §102 all of the elements in the claim must be disclosed

in the applied reference. Wyers '832 does not even remotely disclose a locking head

cover and therefore claims 1, 18, 30, and all claims depending therefrom should be

allowed as well as newly presented claim 36.

The Examiner has rejected Claims 1, 18, and 30 among others as being

obvious over Zapushek in view of Hampton et. al. or Heald. Assuming arguendo that

combining Hampton or Heald with Zapushek would yield all of the claim limitations

recited in the claims, there is still no motivation to combine Zapushek with either

Hampton et al. or Heald. A prima facie case of obviousness cannot be established

without a basis for combining or modifying the applied references. (M.P.E.P.

§2143.01). There is no motivation to combine Zapushek with Hampton or Heald

because Zapushek already provides a seal in the form of O-ring 120. To suggest

that it is obvious to combine these references assumes that the Zapushek design is

Page 12 of 17 SN: 10/773,878 flawed. There is no such suggestion in the applied references. The only suggestion

to replace the O-ring seal with a "cover portion operative to engage the locking

head" with a "surrounding flange edge with an associated seal structure" is found in

the present application (claims 1, 18, 30, and 36). When the only suggestion to

combine the teachings of the applied references in the manner proposed by the

Examiner is found in the hindsight accorded one who first views the Applicant's

disclosure, an obviousness rejection under 35 U.S.C. §103 is improper. See In re

Fritch, 972 F.2d 1260, 1266, 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir. 1992). The

Examiner has failed to establish a prima facie case of obviousness and therefore

claims 1, 18, 30 and all claims depending therefrom should be allowed as well as

newly presented claim 36.

Even if one were to combine Zapushek with either Hampton or Heald, the

combination does not teach all of the limitations as recited in, for instance, claims 1,

3, 18, 20, 30, and 36. A prima facie case of obviousness requires that the prior art

reference (or references when combined) teach or suggest all the claim limitations.

In re Vaeck, 947 F.2d 488, 20 U.S.P.Q. 2d 1438 (Fed. Cir. 1991); In re Royka, 490

F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974); In re Wilson, 424 F.2d 1382, 1385, 165

USPQ 494, 496 (CCPA 1970) ("All words in a claim must be considered in judging

patentability of that claim against the prior art."); MPEP §2143.03.

Hampton's protective cover 26 is inoperative to seal the locking head as is

apparent in figures 2-6. In these figures shackle-receiving openings 40 are

oversized. (Hampton: col 3, line 6). Instead seals 32 or 34N are used to seal the

Therefore, in order to seal the head as suggested by the Examiner the

combination of Zapushek with Hampton would result in fitting a tubular sleeve 34

(Hampton) on Zapushek's shackle 26, with O-rings 32 (Hampton) disposed on both

Page 13 of 17 SN: 10/773.878 ends of the tubular sleeve. This combination does not contain the limitations recited

in the claims. For example claims 1, 18, 30, and 36 recite a "head cover" that is

operative "to engage said locking head" with a "surrounding flange edge with an

associated seal structure." The above combination does not cover even a portion of

the locking head, does not engage the locking head, and does not have a

surrounding flange edge. Accordingly, the Examiner has not established a prima

facie case of obviousness because, in addition to failing to provide a motivation for

combining the references, the references also fail to teach all of the limitations in at

least claims 1, 18, 30, and 36. It follows that claims 1, 18, 30, 36 and all claims

depending therefrom should be allowed.

The combination of Zapushek with Heald also fails to include all of the

limitations as recited in claims 1, 18, 30 and 36. Specifically, these claims recite that

the cover portion "engages said locking head." If flaps 76 are analogous to the

flange seal then horizontal portion 68 must be analogous to the flange portion. It is

clear then from figures 3 and 4 and is explained at column 3, lines 40-44, that the

cap 58 is engaged with the cover 30 and not engaged with the lock head as is the

recitation in claims 1, 18, 30, and 36. Claim 36 further recites that the head cover

skirt is operative to "mechanically engage at least some of the peripheral head

surface" and that the flange extends in "confronting relationship" with the inner head

The combination of Zapushek and Heald does not teach a mechanical

engagement with the locking head nor does it teach that the flange portion is in

confronting relationship with a face of the lock head. Accordingly, the Examiner has

not established a prima facie case of obviousness because, in addition to failing to

provide a motivation for combining the references, the references also fail to teach

Page 14 of 17 SN: 10/773,878 all of the limitations in at least claims 1, 18, 30, and 36. It follows that claims 1, 18,

30, 36 and all claims depending therefrom should be allowed.

Finally, even if one were to combine the applied references without

motivation, all of the limitations of claims 3 and 20 are not disclosed. For instance,

combining Zapushek with Heald would result in a device that provides access to the

keyhole via slit 48 formed by lower parts 44 and 46. Claims 3 and 20 recite a "cap

member movable between an open position permitting access to the keyway and a

closed position wherein said cap member prohibits access to the keyway." Slit 48 is

not a cap member and therefore the limitation of a cap member is not present in the

combination of Zapushek with Heald. Again the applied references fail to provide a

motivation for combining the references and the references fail to teach all of the

limitations in at least claims 3 and 20. It follows then that claims 3, 20, and all claims

depending therefrom should be allowed.

Based on the foregoing and with all due respect to the Examiner's initial

reading of the applied references, Applicant submits that the present application is in

complete condition for allowance. Action to that end is courteously solicited. If any

issues remain to be resolved prior to the granting of this application, the Examiner is

requested to contact the undersigned attorney or agent for the Applicant at the

telephone number listed below.

Page 15 of 17 SN: 10/773,878 Due to this Amendment, a new filing fee calculation is provided, as follows:

Maximum Total Total Claims
Claims This Previously Paid
Amendment For

36 - 35 =  $1 \times 25.00 = 25.00$ 

Total Independent
Claims Per
Claims Previously
This Amendment

Maximum Independent
Claims Previously
Paid For

4 -  $3 = 1 \times $100.00 = $100.00$ 

Additional Filing Fee Due \$125.00

Accordingly, the Commissioner is hereby authorized to charge \$ 125.00 to Deposit Account 13-1940 for the claim amendments. Furthermore, The Commissioner is hereby authorized to charge any deficiency in the payment of the required fee(s) or credit any overpayment to Deposit Account No. 13-1940.

Respectfully submitted,

Martin & Henson, P.C.

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## **CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8**

I hereby certify that the foregoing *AMENDMENT (17 pages)* and *REQUEST FOR A THREE-MONTH EXTENSION OF TIME (2 pages)* is being deposited with the United States Postal Service as first-class mail in an envelope addressed to Mail Stop Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 9th day of February, 2006.

lohn W. Carpenter